

MUNICIPAL ORDER NO. _____

AN ORDER OF THE CITY COUNCIL OF THE CITY OF ERLANGER, KENTUCKY (THE “CITY”), AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY AND CORPOREX PARKS OF KENTUCKY, LLC; KEY PROPERTY DEVELOPMENT, LLC; WILLIAM P. BUTLER; AND MARTIN C. BUTLER, AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 1, 1982 FOR THE BENEFIT OF KEVIN M. BUTLER AND CHRISTA S. BUTLER (COLLECTIVELY, THE “COMPANY”) RELATING TO THE ACQUISITION, CONSTRUCTION, EQUIPPING AND INSTALLATION OF A MIXED-USE PROJECT TO BE LOCATED WITHIN A DOWNTOWN BUSINESS DISTRICT AS DESIGNATED BY THE CITY (THE “PROJECT”); AGREEING TO UNDERTAKE THE ISSUANCE OF INDUSTRIAL BUILDING REVENUE BONDS AT THE APPROPRIATE TIME TO PAY THE COSTS OF ACQUIRING, CONSTRUCTING, EQUIPPING AND INSTALLING SAID PROJECT AND FACILITIES; AND TAKING OTHER PRELIMINARY ACTION.

WHEREAS, Corporex Parks of Kentucky, LLC; Key Property Development LLC; William P. Butler; and Martin C. Butler, as Trustee under Trust Agreement dated September 1, 1982 for the benefit of Kevin W. Butler and Christa S. Butler (collectively, the “Company”), proposes the acquisition, construction, equipping and installation of a mixed-use project to be located within a designated downtown business district of the City, and Kenton County, Kentucky on property located in the City commonly referred to as the Circleport Development (the “Project”), as provided for in Section 103.200 of the Kentucky Revised Statutes, and in this connection it has been determined that the City may assist the Company by causing the acquisition, construction, equipping and installation of the Project and by entering into at the appropriate time a lease agreement or agreements with reference thereto pursuant to authority of Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes (collectively, the “Act”), all in furtherance of the purposes of the Act and the public benefit of the residents and

inhabitants of the City; such lease agreement or agreements to be upon such terms and conditions as the Act may require and the City may deem advisable; and

WHEREAS, the acquisition, construction, equipping and installation of the Project by the Company will encourage the expansion of industry and commerce in accordance with the public policy of the Commonwealth of Kentucky by promoting the economic development of the Commonwealth of Kentucky and the City, will relieve conditions of unemployment, will encourage the increase of industry and commerce and will improve the economic welfare of the people of the City; and

WHEREAS, the City is further authorized by the Act to issue bonds, which term under the Act encompasses bonds, variable rate bonds, commercial paper bonds, bond anticipation notes or any other obligations for the payment of money issued by a city, county or other authority pursuant to the Act, for the purpose of defraying the cost of acquiring, constructing, equipping and installing an industrial building or buildings, as defined in the Act; discussions have occurred between representatives of the Company and the City incident to the issuance of industrial building revenue bonds by the City; the City has agreed with the Company to issue such bonds upon compliance by the Company with certain conditions, requirements and obligations, and subject to the approval of the City of the terms of all agreements, resolutions, order, ordinances and other documents required incident to said bond issue; and the City has authorized the Company to proceed with the acquisition, construction, equipping and installation of the Project, subject to reimbursement of the costs of the Project from the proceeds of such bonds, when, as and if issued; and

WHEREAS, based upon an estimate of the costs of the Project, the City proposes to issue its industrial building revenue bonds in one or more series as determined by the Company and

agreed to by the City in an amount not to exceed Four Hundred Fifty Million Dollars (\$450,000,000) (the "Bonds"), such Bonds to be sold and delivered by the City to pay the costs of the Project, together with costs incident to the authorization, sale and issuance of such Bonds, but with such contributions from the Company as may be necessary; and

WHEREAS, the City proposes to enter into at the appropriate time a lease agreement or agreements with the Company with respect to the Project, whereby the Company will covenant and agree to pay amounts sufficient to provide for the payment of principal of and premium, if any, and interest on the Bonds, together with all trustee and paying agents' fees in connection with the Bonds as the same become due and payable; the liability of the Company under this instrument or any other instrument related to the issuance of the Bonds shall be limited to its interest in the Project to be financed thereby and no party shall have the right to obtain payment from the Company or from any assets of the Company other than such Project; and

WHEREAS, it is deemed necessary and advisable that a Development Agreement between the City and the Company be executed setting forth the preliminary agreements of the parties with respect to the acquisition, construction, equipping and installation of the Project, the issuance of the Bonds to defray the costs thereof and the payments to be made by the Company with respect to the Project; and

NOW, THEREFORE, BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF ERLANGER, KENTUCKY, AS FOLLOWS:

Section 1. It is hereby found, determined and declared that (i) the recitals set forth in the preamble to this Order, which are incorporated in this Section by reference, are true and correct; (ii) the total amount of money necessary to be provided by the City for the acquisition, construction, equipping and installation of the Project to be financed by the Bonds, in one of

more series of Bonds, will not exceed Four Hundred Fifty Million Dollars (\$450,000,000); (iii) the Company has represented that it will have sufficient financial resources to acquire, construct, equip and install the Project and to place it in operation and to continue to operate, maintain and insure the Project throughout the term of the Bond issue, meeting when due the obligations of the proposed lease agreement or agreements; and (iv) sufficient safeguards will be provided by the lease agreement or agreements to insure that all money provided by the City from the proceeds of the sale of the Bonds will be expended by way of direct expenditure or reimbursement, solely and only for the purposes of the Project.

Section 2. It is hereby found, determined and declared that the cost of acquiring, constructing, equipping and installing the Project, which Project is more fully set forth in the Development Agreement, will be paid out of the proceeds of the Bonds and such contributions of the Company as may be necessary to complete the Project as defined in the lease agreement or agreements to be executed by and between the City and the Company at the appropriate time pursuant to the Act; **THAT NONE OF THE BONDS WILL BE GENERAL OBLIGATIONS OF THE CITY; THAT NEITHER THE BONDS NOR THE INTEREST THEREON SHALL CONSTITUTE OR GIVE RISE TO ANY INDEBTEDNESS OF THE CITY OR ANY CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER, BUT THAT THE BONDS AND THE PAYMENT OF INTEREST THEREON SHALL BE SECURED AND PAYABLE SOLELY AND ONLY BY A PLEDGE OF AMOUNTS TO BE PAID BY THE COMPANY UNDER SUCH LEASE AGREEMENT; AND THAT NO PART OF SAID COSTS WILL BE PAYABLE OUT OF ANY GENERAL FUNDS, REVENUES, ASSETS, PROPERTIES OR OTHER CONTRIBUTIONS OF THE CITY.**

Section 3. In order to induce the acquisition, construction, equipping and installation of the Project in the City with the resultant public benefits which will flow therefrom, it is deemed necessary and advisable that the Development Agreement hereinafter referred to be approved and executed for and on behalf of the City. Accordingly, the Development Agreement by and between the Company and the City substantially in the form and with the contents set forth in EXHIBIT A attached hereto and incorporated herein by reference is hereby approved and the Mayor is hereby authorized and directed to execute and deliver said Development Agreement.

Section 4. Inasmuch as the Project is to be acquired, constructed, equipped and installed in order to conform to the requirements of the Company, so that the Company may provide additional mixed uses thus furthering economic development and employment to citizens and residents of the local community, and inasmuch as the Company is able to plan, acquire, construct, equip and install the Project and possesses more expertise in such matters, it is hereby found, determined and declared that acquisition, construction, equipping and installation of the Project should be undertaken or caused to be undertaken by the Company. Accordingly, the Company is hereby authorized to formulate and develop plans for the acquisition, construction, equipping and installation of the Project and to enter into such contracts and undertakings as may be required for the acquisition, construction, equipping and installation of the Project. Reimbursements made to the Company after the receipt of the proceeds of the sale of the proposed Bond issue by the City shall be subject to the certifications by qualified persons to be designated by the Company as specified in the lease agreement or agreements to be entered into by the City and the Company at the appropriate time pursuant to the Act.

Section 5. This Order and the Development Agreement approved hereby constitute the present official intent of the City to issue the Bonds at a later date.

Section 6. Keating Muething & Klekamp PLL, Cincinnati, Ohio, is hereby approved as local Bond Counsel. Local Bond Counsel is authorized and directed to take any legal action necessary or appropriate in connection with the issuance of the Bonds. The City Attorney is authorized and directed to assist Local Bond Counsel in any appropriate manner.

Section 7. No City funds shall be expended on the Project, except such as are derived from Bond proceeds.

Section 8. To the extent any resolution, ordinance or part thereof is in conflict, the provisions of this Resolution shall prevail and be given effect.

Section 9. This Order shall be in full force and effect from and after its adoption as provided by law.

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INTRODUCED, SECONDED, READ AND ADOPTED AT A DULY CONVENED MEETING OF THE CITY COUNCIL OF THE CITY OF ERLANGER, KENTUCKY, held on the ____ day of _____, 2022, on the same occasion signed in open session by the Mayor as evidence of her approval, attested under seal by the City Clerk, ordered to be filed and recorded as required by law, and declared to be in full force and effect according to law.

JESSICA FETTE, MAYOR

ATTEST:

SHERRY HOFFMAN, CITY CLERK

CERTIFICATION

I, the undersigned, do hereby certify that I am the duly qualified and acting City Clerk of Erlanger, Kentucky, and as such City Clerk, I further certify that the foregoing is a true, correct and complete copy of Order No. _____, duly adopted by the City Council of said City at a duly convened meeting held on the _____ day of _____, 2022, signed by the Mayor, duly filed and recorded in my office, all as appears from the official records of said City in my possession and under my control.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said City this _____ day of _____, 2022.

SHERRY HOFFMAN, CITY CLERK

EXHIBIT A
DEVELOPMENT AGREEMENT

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